

## The Reiners' Deaths

**Take-Away:** The deaths of Rob Reiner, and his wife Michele could soon bring to the headlines two seldom encountered probate rules: simultaneous deaths and the slayer statute.

**Background:** The tragic deaths of Rob Reiner and his wife is in the headlines this week. As the circumstances of their deaths become clearer with the police's continuing investigation, a couple of little known (or encountered) probate rules could possibly impact the distribution of their estates.

**Simultaneous Death:** The Reiner's bodies were found in their home by their daughter. Who died first? The Estates and Protected Individuals Code (EPIC) contain a provision that replaced the 'old' Uniform Simultaneous Death Act. [MCL 700.2104.] It provides that an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours, is considered to have predeceased the event if the decedent's Will or Trust does not provide an alternate survivor- duration rule. This 120 hour survivorship rule also applies to joint tenancy, intestate succession, and beneficiary designations, i.e., all 'governing instruments' in the EPIC. If there is no evidence of who died first, each individual is not considered to have survived the other for property distribution purposes, i.e., the assets are distributed as if they died separately. [The former Michigan Uniform Simultaneous Death Act of 1941, MCL 720-101-720.108 was repealed in 1998.]

**California:** California follows the Uniform Simultaneous Death Act. Since the Reiners were residents of California, a community property jurisdiction, assuming that there is no evidence that one spouse outlived the other by at least 120 hours required by the Act (a pretty good bet) each half of their community property will be distributed according to the deceased spouse's own estate plan, or in the absence of an estate plan, in accordance with California's intestate succession laws.

**Aside:** This same simultaneous death statute may also be pertinent regarding the deaths of actor Gene Hackman and his wife earlier this year. In their situation, their bodies were discovered many days after their deaths, so it is possible that the 120 hour survivorship

rule (also followed in New Mexico where the Hackman's resided) may control who inherits their respective estates.

**Slayer Statute:** At present, the Reiner's son Nick is under arrest for the possible death of his parents. The Reiners have three children, and Rob adopted his former wife's (Penny Marshall) daughter, Tracy, who he raised as his own child. The question is what happens if Rob and Michele's estate plans provide for Nick, one of their four children? Will Nick forfeit any beneficial interest under his parents' estate plans?

**California:** California, like Michigan, applies a slayer statute. California's slayer statute, made famous during the Menendez brothers' trial, prevents a person who feloniously and intentionally kills another from inheriting property, benefiting from a Will or Trust, or serving in any fiduciary capacity for the victim's estate. [California Probate Code Section 250.] The California slayer statute also extends to TOD and POD beneficiary designations, life insurance beneficiary designations, and retirement accounts.

**Michigan:** Michigan's slayer statute is found at MCL 700.2803. This forfeiture statute applies to the felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent. This statute's effect is that a provision in a 'governing instrument' is treated as if the killer or felon disclaimed all provisions revoked by the Michigan slayer statute. [MCL 700.2803(4).] There is also the general statement of purpose in the Michigan slayer statute that "*A killer's or felon's wrongful acquisition of property, or interest not covered by this section must be treated in accordance with the principle that a killer or felon cannot profit from his or her wrong.*"

The Michigan Court of Appeals has held that voluntary manslaughter is an intentional killing, so that one convicted of voluntary manslaughter forfeits any beneficial interests in the victim's estate plan. *In re Estate of Nale*, 290 Mich App 704 (2010).

**Conclusion:** Much more has to be learned before either of these two probate laws are deemed applicable to the Reiner family tragedy. There are some notable exceptions to the application of a slayer statute, like self-defense, mental illness, and accidental deaths, that may cause the statute to not apply to Nick if he goes to trial in the death of his parents. It's

probable that the 120 hour rule will not apply in light of the circumstances and timing of the Reiners' deaths that were discovered by their daughter on Sunday, but that 120 hour statutory 'rule' can be overridden by a provision in the decedent's Will or Trust, which have not become a matter of public knowledge at this point.

If you would like to read additional missives, [click here](#).